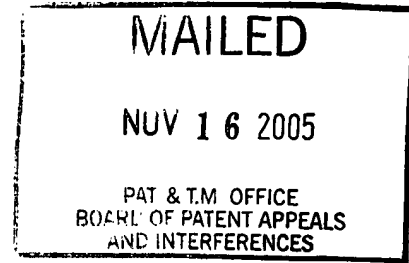


UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES



Ex parte BRADLEY S. RESCH, JOSEPH M. ZUKOWSKI,
MARGARET A. O'DONOGHUE, and SHANE C. SMITH

Application No. 10/090,517

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on October 5, 2005. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

On January 18, 2005, appellants filed a Notice of Appeal. A review of the file reveals that an incorrect fee of \$450.00 was charged for the Notice of Appeal. Before further review of this file, the correct fee of \$500.00 must be applied to the appellants' account.

Application No. 10/090,517

Also, a review of the application indicates that the Evidence appendix and Related proceedings appendix sections are missing from the appeal brief filed March 16, 2005. Therefore, the appeal brief does not comply with all the requirements of 37 CFR § 41.37(c).

37 CFR § 41.37(c) states:

(c)(1) The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(I) through (c)(1)(x) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(I) through (c)(1)(iv) and (c)(1)(vii) through (c)(1)(x) of this section:

(ix) *Evidence appendix.* An appendix containing copies of any evidence submitted pursuant to §§ 1.130, 1.131, or 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief. See § 41.33 for treatment of evidence submitted after appeal. This appendix may also include copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal.

(x) *Related proceedings appendix.* An appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of this section.

A supplemental brief that is in compliance with 37 CFR § 41.37(c) is required. For more information on the Board's new

Application No. 10/090,517

rules see the web page entitled More Information on the Rules of Practice Before the BPAI, Final Rule at:

<http://www.uspto.gov/web/offices/dcom/bpai/fr2004/moreinfo.html>.

In addition, the examiner's answer mailed on June 3, 2005 is not in compliance with the requirements of 37 CFR § 41.37. The following headings need to be corrected in order to be consistent with the appeal brief filed March 16, 2005:

Summary of the Claimed Subject Matter - replacing the Summary of the Invention section in paragraph (5).

Evidence Relied Upon - replacing the Prior Art of Record section in paragraph (9).

Grounds of rejections to be Reviewed - replacing the Grouping of Claims and Grounds of Rejection sections in paragraph (7) and (10).

Acknowledgment of the Related Proceedings and Evidence appendices, if applicable.

A revised examiner's answer that is in compliance with 37 CFR § 41.37 is required.

Accordingly, it is

ORDERED that this application be returned to the examiner to: 1) entry of the correct Notice of Appeal fee; 2) hold the appeal brief of March 16, 2005 defective; 3) request appellants to file a supplemental appeal brief in compliance with 37 CFR § 41.37; 4) vacate the examiner's answer and submit a revised examiner's answer in response to the supplemental appeal

Application No. 10/090,517

brief and in accordance with the new rules effective September 13, 2004; and 5) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

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